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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 SERGE OBUKOFF,

17 Defendant.
18

No. SA CR 18-140 (A) -JLS

GOVERNMENT'S MOTION IN LIMINE TO
LIMIT CROSS-EXAMINATION ON CERTAIN
STATEMENT BY LAUREN PAPA

19
20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney's Office for the Central
22 District of California and Assistant United States Attorneys Joseph
23 T. McNally and Jeff Mitchell, hereby files its motion in limine to
24 limit Defendant's cross-examination on a certain statement by Lauren
25 Papa. The parties conferred and are unable to reach an agreement.
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1 This motion in limine is based upon the attached memorandum of
2 points and authorities, the files and records in this case, and such
3 further evidence and argument as the Court may permit.
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5 Dated: August 1, 2021

Respectfully submitted,

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9 Conferred by 28 U.S.C. § 515

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. ARGUMENT**

3 During defense counsel's opening, he referenced a statement
4 attributed to government witness Lauren Papa in a government
5 memorandum of interview - Ms. Papa said she was stupid financially
6 and had taken hard money loans from a "Chinese bitch" named B.W.
7 Defense counsel's reference to this statement is a blatant attempt to
8 cast Ms. Papa as a racist and thereby inflame and unfairly prejudice
9 the jury against one of Defendant's criminal coconspirators who will
10 testify against him. Ms. Papa's reference to a third party as a
11 "Chinese bitch" is not relevant to this case, and even if it is, the
12 reference should be excluded under Rule 403. The Court should
13 preclude defense counsel from cross-examining Ms. Papa regarding this
14 statement.

15 Under Rule 401, "[r]elevancy is not an inherent characteristic
16 of any item of evidence but exists only as a relation between an item
17 of evidence and a matter properly provable in the case." Huddleston
18 v. United States, 485 U.S. 681, 689 (1988) (citing Advisory Committee
19 Notes on Fed. R. Evid. 401).

20 Under Rule 403, a district court has discretion to exclude
21 relevant evidence "if its probative value is substantially out-
22 weighed by the danger of unfair prejudice, confusion of the issues,
23 or misleading the jury, or by considerations of undue delay, waste of
24 time, or needless presentation of cumulative evidence." Fed. R.
25 Evid. 403. Thus, "[w]here the evidence is of very slight (if any)
26 probative value, ... even a modest likelihood of unfair prejudice or
27 a small risk of misleading the jury" will justify excluding that
28 evidence. United States v. Hitt, 981 F.2d 422, 424 (9th Cir. 1992).

1 In this case, whether Ms. Papa referred to a third party, who
2 is unassociated with this case, as a "Chinese bitch" is not relevant
3 under the Rules of Evidence. To be sure, this statement would be
4 relevant for purposes of bias if Defendant was a person of Chinese or
5 agent descent. But he is not. Defendant is a white male from Russia
6 who has been living and practicing medicine in the United States for
7 decades. Thus, in the context of this case, Ms. Papa's statement
8 does not meet the relevancy requirement of Rule 401 and the
9 admissibility requirement of Rule 402.

10 Additionally, even if Ms. Papa's reference is somehow relevant,
11 its minimal probative value is substantially outweighed by unfair
12 prejudice. Indeed, this is a classic example of a witness's
13 statement that does not show bias against Defendant, but that will
14 likely inflame and prejudice the jury against a witness. Federal
15 courts have precluded similar efforts to introduce evidence showing
16 racial animus or general racial bias against defendants and witnesses
17 under Rule 403.

18 In United States v. Sahakian, the district court precluded,
19 under Rule 403, the government from introducing against the
20 defendant- an Aryan Brotherhood member - evidence of his beliefs,
21 associations, and "racial epithets" for the purpose of showing
22 "general racial bias." See No. CR 02-938 (A) VAP, 2008 WL 11383346,
23 at *7-8 (C.D. Cal. July 28, 2008). The court distinguished cases
24 where evidence of racism was relevant to the case at hand, (such as
25 hate crimes), and explained that "[b]y contrast, evidence of [the
26 defendant's] association with the Ku Klux Klan, or his religious
27 beliefs, or a general predilection for the use of racial epithets, is
28 not necessary in order for the Government to explain to the jury the

1 nature of the Aryan Brotherhood, the organization which is the
2 subject of the First Superseding Indictment in this case." Id.

3 Similarly, in United States v. Boyce, the district court, under
4 Rule 403, precluded a defendant from introducing racist voice and
5 text messages she had received from a witness who the defendant had
6 allegedly stolen money from - and for which she had been indicted.
7 See 759 F. App'x 259, 264 (5th Cir. 2019). "The defense intended to
8 show not only [the witness's] bias against [the defendant], but also
9 to cast [the witness] as a 'misogynist and a racist.'" Id. The
10 Fifth Circuit affirmed, explaining that "[i]t is well within the
11 discretion of the trial court to exclude evidence that arouses the
12 jury's hostility or sympathy without regard to its probative value,"
13 and that although "the voice and text messages might have some
14 probative value, their greatest stated value to the defense was their
15 propensity to stir the jury's sympathy for Boyce and to arouse its
16 anger toward Rogers." Id.

17 Preclusion of Ms. Papa's "Chinese bitch" statement in this case
18 is more compelling than the courts' preclusion of statements in
19 Sahakian and Boyce. Ms. Papa's statement has no nexus to the
20 kickback conspiracy before this Court - in contrast to the nexus
21 between the excluded evidence of racism and the Aryan Brotherhood in
22 Sahakian. Additionally, Ms. Papa's statement was not directed to
23 Defendant - in contrast to the excluded racist and misogynist voice
24 and text messages from a witness who the defendant was indicted for
25 stealing from. In short, to prevent defense counsel unfairly
26 prejudicing the jury by casting Ms. Papa as a racist, any reference
27 to Ms. Papa's statement should be precluded from cross-examination.
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1 **II. CONCLUSION**

2 For the above reasons, the Court should grant the governments
3 motion in limine.